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09/655,091	09/05/2000	Johann Meseth	GR 98 P 3112	8366

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EXAMINER

KEITH, JACK W

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/655,091
Filing Date: September 05, 2000
Appellant(s): MESETH, JOHANN

MAILED

JUN 16 2004

GROUP 3600

Laurence A. Greenberg
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/29/2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement, as set forth in 37 CFR 1.192(c)(7) and (c)(8), that claims 3, 5 and 7 stand or fall with claim 1 and claims 4, 6, and 8 stand or fall with claim 2. The patentability of claims 3-8 is not separately argued.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

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4,022,655

GAOUDITZ ET AL

5-1977

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Gaouditz et al (4,002,655).

Gaouditz discloses a containment vessel for a nuclear reactor comprising:

an interior space (8/10);

a condensing chamber (11) containing a cooling fluid (12) disposed in said interior space;

a pressure chamber (7, 29, 33-34) disposed in said interior space (8/10), said pressure chamber having a top region (*note that applicant's claims are open-ended and allow for chamber (29, 33-36) to house the condenser, thus the condenser is disposed in the pressure chamber*);

a condenser (37) communicating with said pressure chamber (7) through a flow path;

a condensing pipe (e.g., 13, 15, 30, 31) leading into said condensing chamber (11) (*note that at least pipes 13 and 30 are located below the end of drain pipe (14)*);

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Additionally note that applicant's claim language is silent on where the condensing pipe begins);

and a drain pipe (14) being permanently open, said drain pipe disposed in said interior space and fluidically connecting said top region of said pressure chamber to said condensing chamber, said drain pipe (14) bottom end being immersed in said condenser chamber, said drain pipe defining a direct connection to said condensing chamber (11), and said drain pipe not connected to said condenser.

While applicant's arguments appear to be directed to how and in what his containment vessel operates it is noted that applicant is claiming an apparatus. With regard to this argument and the claim language "for non-condensable gases" statements of intended use are essentially method limitations. Thus, the intended use claim language does not serve to patentably distinguish the claimed structure over that of the reference. See In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re Finsterwalder, 168 USPQ 530; In re Casey, 512 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon (i.e., drain pipe for non-condensable gases) does not serve to limit an apparatus claim.

Note that pressure chamber (7) would inherently have air located therein. During an accident condition steam developing in the pressure chamber would entrain the air (i.e., non-condensable gas) and direct said air (non-condensable gases)/steam mixture into the condensing chamber.

Within the arguments presented applicant asserts a specific design criteria for the piping and accident conditions. None of said specific design criteria for the piping and accident conditions are set forth in the specification. Without such criteria and without experimental evidence to disprove that the structure of Gaouditz is not capable of meeting applicant's intent then the structure of Gaouditz reads on applicant's claimed invention.

Applicant further argues that the drain pipe (14) of Gaouditz is not located in the top region of the pressure chamber and that the drain pipe (14) is not connected to the condenser.

Review of Gaouditz figure 1 clearly shows that the drain pipe (14) is located in the upper portion of the pressure chamber (7). Note that if pressure chamber (7) were divided in two halves at reference numeral 32 it would be apparent that drain pipe (14) is located in the upper 1/4 portion of pressure chamber (7). Additionally from the figure one can clearly see that the condenser (37) and drain pipe (14) are not connected.

While patent drawings are not drawn to scale, relationships clearly shown in the drawings of a reference patent cannot be disregarded in determining the patentability of claims. See In re Mraz, 59 CCPA 866, 455 F.2d 1069, 173 USPQ 25 (1972).

As set forth above the containment vessel of Gaouditz reads on applicant's claimed invention. The rejection of Gaouditz is herein incorporated by reference.

(11) Response to Argument

Applicant argues that the structure of Gaouditz does not function the same as the claimed structure. Particularly, applicant argues that components 13 and 15 (condensing pipe) and component 14 (drain pipe) are the same kind of components, arranged in the same manner and of relatively the same configuration and dimensions. Thus, these components according to applicant cannot perform the functions as set forth in the claims language.

First, as set forth in the Final rejection and above, structurally Gaouditz meets the claimed concept. Second, careful review of the claims and as pointed out in the rejection actual dimensions of the condensing and drain pipes are not claimed nor is there any support in the disclosure for one of ordinary skill to discern what the required dimensions/configuration of applicant's claimed condensing and drain pipes. Note that the dimensions/configuration of the condensing and drain pipes are features which are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification, when present, are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant further argues that the material or article worked upon (non-condensable gases) are not present in Gaouditz, as the disclosure of Gaouditz is silent on such. Thus, the structure of Gaouditz is not designed to function in the manner desired by applicant's claimed invention.

Again as set forth above that pressure chamber (7) would inherently have air located therein. During an accident condition steam developing in the pressure chamber would entrain the air (i.e., non-condensable gas) and direct said air (non-condensable gases)/steam mixture into the condensing chamber. Applicant's claimed drain pipe does not preclude other material such as steam from being drained to the condensing chamber nor does applicant's condensing pipe prevent non-condensable gases from entering it. For this reason the phrase "for non-condensable gases" as set forth in the Final rejection and above is considered to be "intended use". Structurally there does not appear to be any discerning feature that sets forth applicant's invention over that of Gaouditz.

Particular attention is noted to page 11 of the Appeal Brief wherein applicant sets forth the object of the invention to remove gases which may possibly arise within the containment in case of an accident and which are not condensable. Here applicant is admitting that the subject gases may not even be present. Thus the argument of Gaouditz not disclosing non-condensable gases would appear to be moot.

For the above reasons (i.e., structurally Gaouditz meets the claim language) it is believed that the rejections should be sustained.



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Respectfully submitted,

Jack W. Keith
Primary Examiner
Art Unit 3641

jwk
June 9, 2004

Conferees
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